

AMENDED IN ASSEMBLY MARCH 27, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1110

Introduced by Assembly Member Pescetti

February 23, 2001

An act to amend Section 19996.2 of the Government Code, relating to state employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 1110, as amended, Pescetti. State employees: reinstatement.

Existing law, known as the State Civil Service Act, provides that absence without leave for 5 consecutive working days is an automatic resignation from state service, as of the last date on which the employee worked. The act provides a procedure for a permanent or probationary state employee to seek reinstatement and the employing department to grant reinstatement. The act further provides that an employee who is reinstated shall not be paid salary for the period of his or her absence or separation or any portion thereof.

The bill would extend from 15 days to 30 days the time by which an employee who is separated from state service pursuant to this provision and is so notified by his or her appointing power may file for reinstatement. The bill would also provide that an employee who is absent without leave, but who is reinstated pursuant to existing law would be paid salary and have his or her benefits restored for the period of time between the date the employee has filed a written request for reinstatement and the date of reinstatement.

This bill also would require that a resignation from state service be set aside if the department finds that the appointing power invoked the

automatic resignation based on fraud, discrimination, or bad faith, and would require the reinstatement of that employee. The bill would provide that an employee who was wrongfully separated from state service be paid his or her salary and interest, and would require the restoration of all benefits that otherwise would have normally accrued for the period of his or her absence or separation.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 19996.2 of the Government Code is~~
2 ~~SECTION 1. Section 19996.2 of the Government Code is~~
3 ~~amended to read:~~
4 19996.2. (a) Absence without leave, whether voluntary or
5 involuntary, for five consecutive working days is an automatic
6 resignation from state service, as of the last date on which the
7 employee worked.
8 A permanent or probationary employee may within 90 days of
9 the effective date of such separation, file a written request with the
10 department for reinstatement; ~~provided, that.~~ *However,* if the
11 appointing power has notified the employee of his or her automatic
12 resignation, any request for reinstatement must be made in writing
13 and filed within ~~15~~ 30 days of the service of notice of separation.
14 Service of notice shall be made as provided in Section 18575 and
15 is complete on mailing. ~~Reinstatement may~~ *If the department finds*
16 ~~that the appointing power invoked the automatic resignation~~
17 ~~based on fraud, discrimination, or bad faith, the resignation shall~~
18 ~~be set aside and the employee shall be reinstated and made whole.~~
19 ~~If the separation is valid, the reinstatement shall be granted only~~
20 if the employee makes a satisfactory explanation to the department
21 as to the cause of his or her absence and his or her failure to obtain
22 leave therefor, and the department finds that he or she is ready,
23 able, and willing to resume the discharge of the duties of his or her
24 position or, if not, that he or she has obtained the consent of his or
25 her appointing power to a leave of absence to commence upon
26 reinstatement.
27 ~~At~~
28 (b) An employee ~~so~~ who was wrongfully separated under this
29 section shall be reinstated and shall ~~not~~ be paid salary and interest,

1 *and all benefits that otherwise would have normally accrued for*
 2 *the period of his or her absence or separation or for any portion*
 3 *thereof shall be restored.*

4 ~~(b) An employee who is absent without leave, but is subject to~~
 5 ~~reinstatement under the conditions set forth in subdivision (a) shall~~
 6 ~~be reinstated and paid salary and the benefits for the period of time~~
 7 ~~between the date the employee has filed a written request for~~
 8 ~~reinstatement and the date of reinstatement.~~

9 (c) If the provisions of this section are in conflict with the
 10 provisions of a memorandum of understanding reached pursuant
 11 to Section 3517.5, the memorandum of understanding shall be
 12 controlling without further legislative action, except that if ~~such~~
 13 ~~the~~ provisions of a memorandum of understanding require the
 14 expenditure of funds, the provisions shall not become effective
 15 unless approved by the Legislature in the annual Budget Act.
 16 ~~amended to read:~~

17 ~~19996.2. (a) Absence without leave, whether voluntary or~~
 18 ~~involuntary, for five consecutive working days is an automatic~~
 19 ~~resignation from state service, as of the last date on which the~~
 20 ~~employee worked.~~

21 ~~A permanent or probationary employee may within 90 days of~~
 22 ~~the effective date of such separation, file a written request with the~~
 23 ~~department for reinstatement. However, if the appointing power~~
 24 ~~has notified the employee of his or her automatic resignation, any~~
 25 ~~request for reinstatement must be made in writing and filed within~~
 26 ~~30 days of the service of notice of separation. Service of notice~~
 27 ~~shall be made as provided in Section 18575 and is complete on~~
 28 ~~mailing. If the department finds that the appointing power invoked~~
 29 ~~the automatic resignation based on fraud, discrimination, or bad~~
 30 ~~faith, the resignation shall be set aside and the employee shall be~~
 31 ~~reinstated and made whole. If the termination is valid, the~~
 32 ~~reinstatement shall be granted if the employee makes a satisfactory~~
 33 ~~explanation to the department as to the cause of his or her absence~~
 34 ~~and his or her failure to obtain leave therefor, and the department~~
 35 ~~finds that he or she is ready, able, and willing to resume the~~
 36 ~~discharge of the duties of his or her position or, if not, that he or~~
 37 ~~she has obtained the consent of his or her appointing power to a~~
 38 ~~leave of absence to commence upon reinstatement.~~

39 ~~(b) An employee who was wrongfully separated under this~~
 40 ~~section shall be reinstated and shall be paid salary and interest, and~~

~~1 all benefits that otherwise would have normally accrued for the
2 period of his or her absence or separation or for any portion thereof
3 shall be restored. An employee who is absent without leave, but is
4 subject to reinstatement under the conditions set forth in
5 subdivision (a) shall be reinstated and paid salary and the benefits
6 for the period of time between the date the employee has filed a
7 written request for reinstatement and the date of reinstatement.~~

~~8 (c) If the provisions of this section are in conflict with the
9 provisions of a memorandum of understanding reached pursuant
10 to Section 3517.5, the memorandum of understanding shall be
11 controlling without further legislative action, except that if such
12 provisions of a memorandum of understanding require the
13 expenditure of funds, the provisions shall not become effective
14 unless approved by the Legislature in the annual Budget Act.~~

